IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE EIGHTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE THE ACTING CHIEF JUSTICE SRI BILAL NAZKI

and
THE HON'BLE MR JUSTICE G.CHANDRAIAH

WRIT PETITION NO : 14277 of 2005

Between:

Dr. Nallamothu Satyanrayana, S/o. Nalamothu Ramaiah,
R/o. 3-4-78, Lone Fine Road, West Bloom Field, MI - 48323
Rep by M. Ramadevi (GPA Holder)

..... PETITIONER

AND

1 Deputy Director, Enforcement, Directorate (Foreign Exchange

Management Act),.
No. 9/1. State Bank Road, Behind India Garage, Bangalore -

560 001.
2 Appellate Tribunal for Foreign Exchange at Janpath, New

Delhi

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of writ of Mandamus declaring the order of the second respondent in Appeal No. 269/2005 dated 20-5-2005 as illegal, causing undue hardship to the petitioner and contrary to the provisions of Foreign Exchange Management Act, 1999 and consequently direct the second respondent-appellate Tribunal to dispense with the deposit of penalty amount imposed by the Respondent No. 1 during the pendency of

Appeal No. 269/2005 on the file of the second respondent and pass such other further order or orders as the Hon'ble Court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.A.SUDERSHAN REDDY

Counsel for the Respondent No.1: MR.A.RAJASHEKAR REDDY (ASST SOLICITOR GEN)

The Court made the following :

ORAL ORDER: (Per Sri Bilal Nazki, the Hon'ble the Acting Chief Justice)

Heard the learned counsel for the petitioner and the learned Assistant Solicitor General appearing for the 1st respondent.

The petitioner filed an appeal before the appellate Tribunal for Foreign Exchange. He has also filed an application for dispensing with the requirement of depositing the penalty amount which has been rejected. Aggrieved by the same, the present writ petition is filed.

The only ground taken in the affidavit before the Appellate Tribunal for dispensing with the deposit of the amount is that the appellant is passing through financial difficulties and is unable to pay the penalty of Rs.1,05,000/- and the condition of pre-deposit would aggravate the financial hardships of the appellant. The requirement of depositing the penalty amount for filing the appeal is laid down in Section 19 of the Foreign Exchange Management Act, 1999 (for short 'the Act'). Proviso to Section 19 of the Act reads as under;

> " Provided further that where in any particular case, the Appellate Tribunal is of the opinion that the deposit of such penalty would cause undue hardship to such person, the Appellate Tribunal may dispense with such deposit subject to such conditions as it may deem fit to impose so as to safeguard the realization of penalty."

Therefore, before the Tribunal exercises the jurisdiction dispensing with the requirement of depositing the penalty amount, it has to satisfy itself that it would aggravate the hardships of the appellant. No material is placed before the Tribunal to come to such a satisfaction. Therefore, in our view, the appellate Tribunal was

right in dismissing the application.

There are no merits in the writ petition and it is accordingly dismissed. No costs.

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08..07..2005

msv

To

1 Deputy Director, Enforcement, Directorate (Foreign Exchange

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